

REMARKS:

Status Of Claims

Claims 1-42 are currently pending in the application with claims 1, 10, 17, 27, and 35 being independent.

Office Action

In the Office Action, the Examiner rejected claims 1, 5, 10, 11, 17-19, 23, 27-31, and 35-38 under 35 U.S.C. § 103(a) as being unpatentable over Gould et al., U.S. Patent Application Publication No. 20040106404. The Examiner rejected claims 1-42 under 35 U.S.C. § 103(a) as being unpatentable over Robinson et al., U.S. Patent No. 6,381,538, in view of Gould. Applicant respectfully submits that the currently pending claims distinguish the present invention from Robinson, Gould, and the other prior art references of record, taken alone or in combination with each other.

Claims 1 and 10 each recite "wherein the receiver is selected from the group consisting of an ADS-B receiver and a UAT datalink receiver". Claim 17 recites "receiving update information in the form of digital data, via a radio signal from a remote transmitter to a receiver selected from the group consisting of an ADS-B receiver and a UAT datalink receiver, with an avionics device". Claim 27 recites "transmitting a radio signal to a receiver selected from the group consisting of an ADS-B receiver and a UAT datalink receiver via a remote transmitter having packaged update information therein to a number of avionics devices, thereby updating software resident on the avionics devices".

Claim 35 recites "receiving data, in the form of a radio signal from a remote transmitter to a receiver selected from the group consisting of an ADS-B receiver and a UAT datalink receiver, at an avionics device".

The Examiner acknowledges that neither Gould nor Robinson discloses receiving software updates over either an ADS-B receiver or a UAT datalink receiver in the manner claimed. Page 2 of the April 23, 2007 Office Action; Page 4 of the May 31 Office Action. In support of the rejection over Gould, the Examiner asserts "it would have been readily apparent for one skilled in the art that the type of receiver [used] to receive the transmitted signals is merely dictated by the nature of the transmitted signals. The well known ADS-B or UAT datalink receiver commonly equipped in the Gould et al system would have been used in the event that the signals containing the software updates are in either the ADS-B or UAT format". Page 2 of the April 23, 2007 Office Action. However, the Examiner does not assert that sending software updates "in either the ADS-B or UAT format" is well known or would have been obvious to one skilled in the art. In fact, the only support for such a proposition is found in the instant specification. Thus, there is a significant concept missing from the Examiner's reasoning.

"As is clear from cases such as *Adams*, **a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art**", emphasis added. *KSR International Co. v. Teleflex Inc.*, Slip Opinion No. 04-1350 at 14; 550 U. S. ____ (2007) (Referring to *United States v. Adams*, 383 U. S. 39, 40 (1966)). Rather, **there must be some "reason to**

combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit", emphasis added. *Id.* (Citing *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")).

Rather, as previously argued, to use such receivers in the manner presently claimed would have been quite novel and nonobvious. For example, Gould explicitly teaches employing a completely separate aircraft transceiver/antenna even though this would add undesirable weight to the aircraft. Gould is in this manner indicative of the "accepted wisdom in the art" at the time of Applicant's invention, and provides clear "evidence of nonobviousness" of the present invention, as claimed.

In the present case, the Examiner has acknowledged that the cited prior art fails to teach each and every claim limitation. Furthermore, the Examiner fails to cite a reference that provides the requisite reasoning to modify Robinson and/or Gould to include the claim limitations. In contrast, the cited prior art teaches away from receiving software updates over ADS-B or UAT datalink receivers as presently claimed. Thus, the Examiner has failed to provide the reasoning required to establish *prima facie* obviousness. As a result, the Examiner has failed to properly establish a *prima facie* case of obviousness, and the present rejections cannot be sustained.

Claim 28 recites "wherein the method further includes providing an authorization

code for accessing the radio signal". Claim 29 recites "wherein said providing said authorization code includes ***providing an authorization code to an avionics device that allows the avionics device to receive the update information***", emphasis added. Claim 30 recites "wherein said providing said authorization code includes ***providing an authorization code within the radio signal that allows the avionics device to receive the update information***", emphasis added. Claim 31 recites "wherein said providing said authorization code includes ***providing an authorization code to the device that allows the remote transmitter to transmit the update information***", emphasis added. Claim 32 recites "wherein said transmitting said radio signal having update information therein includes transmitting a radio signal at ***a private frequency restricted to devices authorized to access the private frequency***", emphasis added.

In rejecting these claims, the Examiner again points to pages 4 and 5 of Gould, and asserts "it would have been well recognized by one skilled in the art that the authorized configuration identity file ... essentially performs the same function of the claimed authorization code". Page 3 of the April 23, 2007 Office Action. However, whether some feature "essentially performs the same function" or not is not the test. Rather, the prior art must teach or suggest all the claim limitations. See MPEP § 706.02(j), citing *In re Vaeck*, 947 F.2d 488, 493, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

In the present case, as previously argued, Gould pages 4 and 5 disclose an "aircraft actual configuration identity (AACI) 160", an "authorized configuration identity 166", and a "unique part number or identifier" each of which identifies a configuration. For example,

Gould's onboard computer "compares the new authorized configuration identity 166 to the AACI 160 to identify any differences". Gould Page 5. In other words, Gould uses these identities to determine to determine one configuration from another. These identifiers are not used in the manner disclosed and do not show the currently pending claim limitations.

Therefore, the Examiner has failed to cite prior art references that teach each and every claim limitation, much less any reason to combine or otherwise modify the cited prior art. Thus, the Examiner has failed to provide the reasoning required to establish *prima facie* obviousness. As a result, the Examiner has failed to properly establish a *prima facie* case of obviousness, and the present rejections cannot be sustained.

The remaining claims all depend directly or indirectly from independent claims 1, 10, 17, 27, and 35, and are therefore also allowable.

Any additional fee which is due in connection with this amendment should be applied against our Deposit Account No. 501-791. In view of the foregoing, a Notice of Allowance appears to be in order and such is courteously solicited.

Respectfully submitted,

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